

Guidance Document

Maine Estate Tax for Nonresident Beneficiaries of Trusts, Limited Liability Companies and Other Pass- through Entities

Estate Tax Treatment of Real and Tangible Property
Located in Maine that has been transferred to a Trust, Limited Liability
Company or Other Pass-through Entity by a Nonresident Decedent

Estate Tax Treatment of Real and Tangible Property Located in Maine that has been transferred to a Trust, Limited Liability Company or Other Pass-through Entity by a Nonresident Decedent

MRSA Title 36, section 4064, provides in part:

Tax on estate of nonresident. A tax is imposed upon the transfer of real property and tangible personal property situated in this State and held by an individual who dies . . . and at the time of death was not a resident of this state. *When real or tangible personal property has been transferred into a trust or a limited liability company or other pass-through entity, the tax imposed by this section applies as if the trust or limited liability company or other pass-through entity did not exist and the property was personally owned by the decedent.* Maine property is subject to the tax imposed by this section to the extent that such property is included in the decedent's federal gross estate. The amount of this tax is a sum equal to that proportion of the federal credit that the value of Maine real and tangible personal property taxed in this state that qualifies for the credit bears to the value of the decedent's federal gross estate.

When a nonresident decedent owns real or tangible personal property ("property") situated in this state, the law requires that the decedent's estate pay to Maine a percentage of the federal credit (calculated under Maine law) equal to the percentage of Maine property in the decedent's estate over the decedent's total federal gross estate. The federal credit is calculated on the federal return and, until recently, most states' estate tax equaled the federal credit allowed for state death taxes.

Prior to 1998 and 2005 changes in Maine law, a beneficial interest in a trust, or an interest in a limited liability company ("LLC") or other pass-through entity ("PTE") was taxable only to the state of residency of the beneficiary, partner, or member. In 1998, Maine estate tax law changed, adding the part of the italicized sentence above to section 4064, to disregard the transfer of real and tangible property to a trust for purposes of determining the taxable estate of a nonresident decedent. Because of this change, property located in Maine, whether or not part of a trust, is sourced to Maine for purposes of calculating the Maine estate tax. In 2005, for estates of decedents dying after January 1, 2005, the italicized sentence above was amended to include the words "limited liability companies and other pass-through entities."

However, not all property in pass-through entities is taxable to Maine. Only real or tangible personal property situated in Maine that is transferred by the nonresident decedent prior to death to the pass-through entity is included in the decedent's estate as if the pass-through entity did not exist and the decedent personally owned the property. The value included in the estate is determined based on the decedent's ownership interest in the entity as of the date of death. (NOTE: All Maine property, tangible and intangible, is included in the estate of a resident decedent.)

Effect of the Change in Maine Estate Tax Law:

100% Ownership

Example:

Adam, a single nonresident, owned a \$300,000 Maine vacation home. The home contained \$100,000 of tangible personal property. Adam transferred both the home and the tangible personal property contained in the home to an LLC. Adam died in 2005 with a \$2 million gross estate, including his interest in the LLC. Disregarding the LLC, and treating the Maine property as if it was personally owned by Adam, the ratio of Adam's Maine property to his federal gross estate is \$400,000 to \$2,000,000, or 20%. The gross state tax on the entire estate is \$99,600; the estate tax attributable to Maine is 20% of that amount, or \$19,920.

	Assets	%	State Tax
Maine	400,000	20%	\$19,920
Resident State	<u>1,600,000</u>	<u>80%</u>	<u>79,680</u>
Total	2,000,000	100%	\$99,600

Owning Less than 100%

In some cases, the decedent did not own 100% of the interest in the entity. He or she may have transferred, by sale or gift, a portion of the entity to another person or entity. In that case, the portion included in the decedent's Maine estate is equal to his or her ownership percentage of the entire entity.

For example, Adam, still a nonresident, transferred his Maine property to an LLC when its value was \$300,000. Adam later sold half of his interest in the LLC to his niece. At the time of his death, Adam's gross estate was valued at \$1.6 million, not including the Maine property which appreciated in value to \$400,000. To find the portion taxable to Maine, calculate Adam's ownership interest in the LLC at the time of death and add that value to the rest of his estate.

Value of LLC	\$400,000
Less: interest of others	<u>(200,000)</u>
Value of Adam's interest	\$200,000

	Assets	%	State Tax
Maine	200,000	11%	\$ 9,946
Resident State	<u>1,600,000</u>	<u>89%</u>	<u>79,574</u>
Total	1,800,000	100%	\$89,520

Interest in Trust, LLC or Pass-Through Entity (PTE) with Assets in Addition to Maine Property

In some cases, Maine property is not the only asset in the trust, LLC or other PTE. In this case, first find what portion of the trust, LLC or other PTE is includable in the decedent's federal gross estate and then determine the ratio of the Maine property to the gross value of the trust, LLC or other PTE. That percentage is then applied to the portion of the trust, LLC or other PTE includable in the decedent's gross estate to determine what is taxable to Maine.

For example, Bob, a Florida resident, has a \$3 million estate exclusive of a 25% interest in a partnership which holds Maine property. The partnership assets consist of the following:

Brokerage account	\$3,000,000
Stamp collection	500,000
Florida real estate	500,000
Maine real estate	<u>1,000,000</u>
Partnership Asset Total	\$5,000,000

First the tax return preparer must calculate the value of the partnership interest that is includable in Bob's federal gross estate, (25% of \$5 million or \$1,250,000), then determine the ratio of the Maine property to the value of the partnership assets. The ratio of the value of Maine real estate to the value of the partnership assets is 1:5 or 20%. Bob is a 25% owner of the partnership, so 5% (25% of the 20%) of the value of the partnership, or \$250,000, is taxable by Maine. If Bob's other non-Maine assets total \$3 million, his federal and Maine gross estate are as follows:

	Federal	Maine
Non-entity assets	\$3,000,000	\$0
Partnership assets	<u>1,250,000</u>	<u>250,000</u>
Gross estate	\$4,250,000	\$250,000

	Assets	%	State Tax
Maine	250,000	6%	\$ 18,545
Resident State	<u>4,000,000</u>	<u>94%</u>	<u>295,775</u>
Total	4,250,000	100%	\$314,320